

SUBCHAPTER K—ECONOMIC, COMMERCIAL AND CIVIL AVIATION FUNCTIONS

PART 101—ECONOMIC AND COMMERCIAL FUNCTIONS

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101.1 Protection of American interests.

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and organizations.

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AUTHORITY: Sec. 302, 60 Stat. 1001; 22 U.S.C.
842.

SOURCE: 22 FR 10871, Dec. 27, 1957, unless
otherwise noted.

§ 101.1 Protection of American inter- ests.

Officers of the Foreign Service shall protect the rights and interests of the United States in its international agricultural, commercial, and financial relations. In pursuance of this duty, they shall:

(a) Guard against the infringement of rights of American citizens in matters relating to commerce and navigation which are based on custom, international law, or treaty.

(b) Observe, report on, and, whenever possible, endeavor to remove discriminations against American agricultural, commercial, and industrial interests in other countries.

(c) Protect the national commercial reputation of the United States.

§ 101.2 Promotion of American inter- ests.

Officers of the Foreign Service shall further the agricultural and commercial interests of the United States:

(a) By carefully studying and reporting on the potentialities of their districts as a market for American products or as a competitor of American products in international trade.

(b) By investigating and submitting World Trade Directory Reports on the general standing and distributing capacity of foreign firms within their districts.

(c) By preparing and submitting upon request trade lists of commercial firms within their districts.

(d) By keeping constantly on the alert for and submitting immediate reports on concrete trade opportunities.

(e) By endeavoring to create, within the scope of the duties to which they are assigned, a demand for American products within their districts.

(f) By facilitating and reporting on proposed visits of alien businessmen to the United States.

(g) By taking appropriate steps to facilitate the promotion of such import trade into the United States as the economic interests of the United States may require.

§ 101.3 Services for American business- men and organizations.

Officers of the Foreign Service shall perform the following-enumerated services for American citizens and business organizations in connection with the conduct of foreign trade subject to such rules and limitations thereon as may be prescribed by the Secretary of State:

(a) Answering trade inquiries.

(b) Lending direct assistance to American citizens and business firms.

(c) Encouraging the establishment of, and supporting, American chambers of commerce.

(d) Preparing themselves for and, upon instructions, performing trade conference work when in the United States on leave, or otherwise.

§ 101.4 Economic and commercial re- porting.

Officers of the Foreign Service shall prepare and submit reports in connection with their duties of protecting and promoting American agricultural commercial interests and for the purpose of providing general information on economic developments within their respective districts for the Departments of State, Agriculture, and Commerce, and for other governmental departments and agencies, in accordance with such rules and regulations as the Secretary of State may prescribe.

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**Subpart A—United States Aircraft
Accidents Abroad**

AUTHORITY: Sec. 302, 60 Stat. 1001; 22 U.S.C. 842.

SOURCE: 22 FR 10871, Dec. 27, 1957, unless otherwise noted.

§ 102.8 Reporting accidents.

(a) *To airline and Civil Aeronautics Administration representatives.* If a scheduled United States air carrier is involved the airline representatives concerned will probably be the first to be informed of the accident, in which event he will be expected to report the accident to the Foreign Service post, to the nearest Civil Aeronautics Administration office, and to his home office in the United States. If this is not the case, the Foreign Service post

should report promptly to the nearest office of the airline concerned and to the nearest office of the Civil Aeronautics Administration, any accident occurring to a scheduled civil air carrier of United States registry within its consular district. To be properly prepared, each post should obtain and have on file for ready reference, the address and telephone number of representatives of any United States airline engaged in scheduled operations within or over the post district.

(b) *To Department and supervisory Foreign Service offices.* A Foreign Service post should report promptly to the Department accidents to any United States civil aircraft occurring in the post district. The report should summarize all available information and, in the case of a scheduled United States air carrier, should state whether the airline has taken over the responsibility of notifying the nearest Civil Aeronautics Administration field office. This report should be submitted by the most expeditious means possible (priority telephone or telegraph message) at Government expense. If the accident involves a private plane or non-scheduled air carrier, these circumstances should be reported, also whether the nearest office of the Civil Aeronautics Administration has been informed. In the latter case, the Department will ascertain from the Civil Aeronautics Board whether it desires to investigate the case, and inform the Foreign Service post accordingly. Consular posts should submit a similar report to their supervisory missions or to their supervisory consular offices in territories where there are no United States missions. Supplementary reports should be supplied the Department and the supervisory Foreign Service office whenever considered appropriate. A final report, after the urgency has diminished, and when the post's role is negligible should cover the post's activities in connection with the accident (see § 102.16(b)).

§ 102.9 Arranging for entry and travel of investigating and airline representatives.

Representatives of the Civil Aeronautics Board, the Civil Aeronautics Administration and the United States

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airline involved may not have the documents necessary for entry into the country where the accident occurred. The local Foreign Service post should lend all assistance possible in obtaining the entry of such representatives into the country where the accident occurred and in expediting their travel to the scene of the accident.

§ 102.10 Rendering assistance at the scene of the accident.

Always in the case of a scheduled United States air carrier and whenever necessary in the case of a non-scheduled carrier or private plane, a local Foreign Service post should dispatch a member of its staff to the scene of the accident in order to insure that proper protection is afforded United States citizens and property involved in the accident and that any evidence as to the cause of the accident is preserved until the arrival of United States Government investigating personnel. (For steps to be taken when the aircraft was carrying a courier or diplomatic pouches, see § 102.14(b).) In the absence of an airline representative, the Foreign Service representative should lend the competent local authorities all possible assistance compatible with the provisions of § 102.11 in caring for the survivors, identifying and disposing of the remains of victims, salvaging and protecting property and preserving wreckage pending an investigation. If an airline representative is already at the scene of the accident or if one arrives shortly thereafter, the Foreign Service representative should assist him in the discharge of his recognized responsibilities in connection with passengers and cargo. However, the Foreign Service representative is also obligated to assist investigating personnel of the United States Government by preserving evidence as to the cause of the accident. Any attempt on the part of the airline representative to exceed his recognized sphere of activity should be called to the attention of the airline involved and the competent local authorities.

§ 102.11 Arranging for the payment of expenses attendant upon an accident.

(a) The Department of State has no funds from which expenses attendant upon an accident to United States aircraft can be paid. In emergencies involving scheduled carriers and in the absence of airline representatives, or other authority, the Foreign Service post should request a deposit from the airline (through the Department if desired) with specific authorization to incur whatever financial obligations the airline is willing to assume for the hiring of guards (in case local police protection is considered inadequate), the provision of accommodations, medical care, and onward transportation for survivors and for other expenses resulting from the accident. In accidents involving a private plane or non-scheduled carrier, the Foreign Service post is not in a position to expend any funds without prior authorization from the Department. In such cases, and in extreme cases involving scheduled carriers, when airline and investigation personnel may be delayed in reaching the scene, the Foreign Service representative, as the representative of all segments of the United States Government in the area, should endeavor to protect and promote the interests of the Government, the airline, and the individual citizen by any means available to him that are consistent with these regulations, and should request funds and instructions as required from the Department.

(b) The local Foreign Service post is not authorized to expend any funds for guarding the wreckage to preserve evidence as to the cause of the accident unless the Civil Aeronautics Board or the Civil Aeronautics Administration authorizes in advance the expenditure of such funds on a reimbursable basis. In the absence of such advance authorization, the Foreign Service post can arrange only for such protection as local authorities are willing to furnish gratuitously.

(c) Voluntary services and personal services in excess of those authorized by law may be accepted and utilized in

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the case of an aircraft accident since the law which normally prohibits such acceptance (31 U.S.C. 665) does not apply “in case of sudden emergency involving the loss of human life or the destruction of property”.

§ 102.12 Protective services for survivors.

(a) *Medical care and hospitalization.* The Foreign Service representative should lend any assistance possible (see §§102.10 and 102.11) in arranging for the best medical and hospital attention available for injured survivors of the accident. If a scheduled United States carrier is involved in an accident, the primary responsibility for providing medical care for passengers and crew rests with the airline, and in such situations the Foreign Service representative should assist the airline in every way that is feasible (see §§102.10 and 102.11).

(b) *Accommodation and onward transportation.* If a scheduled United States carrier is involved in an accident, primary responsibility for providing accommodation and onward transportation for passengers and crew rests with the airline, and in such situations the Foreign Service representative should assist the airline in every way that is feasible (see §§102.10 and 102.11). If the accident involves a private plane or non-scheduled carrier, he should assist passengers and members of the crew who do not require hospitalization in any way compatible with §§102.10 and 102.11 in obtaining appropriate comfortable accommodations accessible from the scene of the accident. If practicable, surviving passengers should remain in the vicinity of the accident until the United States Government investigating personnel can obtain from them all information pertaining to the accident. Surviving passengers leaving the vicinity should furnish addresses at which they can be reached later. The Foreign Service representative should assist the passengers, insofar as he can under the provision of §§102.10 and 102.11, in obtaining necessary clearances from local authorities and in getting onward transportation by the most expeditious means of common carrier transportation available. The surviving aircraft

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crew will be expected to remain in the vicinity of the accident until otherwise instructed by the investigating personnel.

§ 102.13 Protective services with respect to deceased victims of accidents.

(a) *Interim disposition of remains.* Generally, local authorities will assume custody of the remains of deceased victims of the accident and consign them to a mortuary until final disposition can be made.

(b) *Identification of remains.* When necessary, the local Foreign Service post should assist in identifying the remains of United States citizens who are victims of the accident by requesting the Department to procure dental charts, passport application data and photographs, fingerprints, or other United States records.

(c) *Reports on deaths of United States citizens.* The local Foreign Service post shall report the deaths of United States citizens occurring in an aircraft accident in accordance with the procedure prescribed in §§72.1 to 72.8 of this chapter.

(d) *Disposition of remains.* When a scheduled United States air carrier meets with an accident, the United States airline concerned will usually transport the identifiable remains of victims of the accident to the place of final interment designated by the next of kin. If the Foreign Service post is requested, or finds it necessary, to dispose of identifiable remains, it shall follow the procedure prescribed in §§72.9 to 72.14 of this chapter. Where remains are unidentifiable, the local authorities may be expected to make final disposition of these remains locally in accordance with the health requirements of the country concerned, usually by common burial or by cremation, and without regard to the disposition desired by possible next of kin.

§ 102.14 Salvage of mail and other property.

(a) *Mail.* Article 3, sections 6 and 7, of the Air Mail Provisions annexed to the Universal Postal Union Convention, Paris, 1947, provide that the personnel who survive the aircraft accident shall, when possible, deliver the mail to the

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post office nearest the place of the accident or to the one best-qualified to reforward the mail. If the aircraft personnel are unable to do this, the local post office concerned shall make every effort, without delay, to take delivery of the mail and to forward it to the offices of designation by the most rapid means, after determining the condition of the correspondence and reconditioning it if damaged. Most post offices are familiar with these provisions, but if in any case the mail is not being properly cared for, the local Foreign Service post should bring the proper procedure to the attention of the nearest post office.

(b) *Diplomatic pouches.* Immediately upon arriving at the scene of the accident, the Foreign Service representative should ascertain whether the aircraft was carrying a courier or diplomatic pouches. If a courier is found to be aboard, the same personal arrangements should be made for him as are made for other passengers (see §§102.10 to 102.13). An immediate search should also be made for whatever diplomatic pouches the courier may have been carrying and for any pouches that may have been carried as regular cargo. Usually, the cargo manifest will list diplomatic pouches carried as air freight or cargo. The passenger manifest normally will list the total number of pieces of luggage or pouches checked by a courier (if one is aboard), but since he usually carries his pouches with him into the cabin of the plane, the pouch invoices on his person or in his briefcase will offer positive proof of the number of pouches he had in his custody. If any are found, they should be cleared through appropriate government officials of the country and taken to the nearest United States Foreign Service office to await disposition instructions. If it is learned that the postal authorities have already recovered United States diplomatic pouches that may have been involved, these pouches should be obtained from the postal authorities and taken to the nearest United States Foreign Service office to await disposition instructions. A telegraphic message should be dispatched to the Department and to the regional courier office having jurisdiction over that area, giving a descrip-

tion of the pouches recovered. This description should include the office of addressor and addressee and the classification indicator (C, A, or S). The Department and the regional courier office will coordinate instructions to the office for the disposition of these pouches.

(c) *Baggage, personal effects and cargo.* The Foreign Service representative should request the local authorities to arrange for the security storage and protection of such baggage, personal effects and cargo as is recoverable from the aircraft until the property can be released to its owners by local customs and accident investigating authorities, or by the courts. When released, the personal effects of United States citizens, who died in the accident, should be taken into possession and disposed of by the local Foreign Service post in accordance with the procedure prescribed in §§72.15 to 72.55 of this chapter.

§ 102.15 Protection and preservation of wreckage.

In so far as local law permits, the Foreign Service representative should see that arrangements are made (by the airline representative with the local authorities, if a scheduled carrier is involved) for the protection of the wrecked aircraft and its property contents against further damage, pilferage, and access by unauthorized persons, until the arrival of the accident investigation personnel. The prior removal of any of the wreckage or the contents of the aircraft should be prevented unless such action is necessitated by very compelling reasons, such as the need for treating the injured or for removing bodies, or when the wreckage constitutes a public hazard. When under the latter conditions the wreckage and contents of the aircraft must be moved or disturbed in any way, if possible, a record should be made or photographs taken showing the position and condition of the wreckage prior to disturbance. In the case of a private aircraft or non-scheduled carrier, protection should be arranged for the wrecked aircraft and its contents pending the receipt of information from the Department as to whether the Civil Aeronautics Board

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will investigate the case, and until final disposition is made of the property. If the owner of a private aircraft is killed in the wreck and is a United States citizen, the aircraft constitutes part of his personal estate and should be disposed of in accordance with the provisions of §§ 72.15 to 72.55 of this chapter. For rules governing the payment of expenses in connection with the protection and preservation of wrecked United States aircraft, see § 102.11.

§ 102.16 Records and reports in connection with investigation.

(a) *Records.* The Foreign Service representative should maintain a record of the various transactions taking place prior to the arrival of airline, Civil Aeronautics Board and Civil Aeronautics Administration representatives. This record should include all pertinent details with respect to the disposition of persons and property, obligations assumed, arrangements made, et cetera, and should also include any statements made by witnesses.

(b) *Reports.* Reports should be submitted to the Department for its information and the information of aviation authorities and other interested parties in the United States regarding the progress of any investigation which is held and its final outcome when known.

FOREIGN AIRCRAFT ACCIDENTS INVOLVING UNITED STATES PERSONS OR PROPERTY

§ 102.17 Reports on accident.

When an accident occurs to a foreign aircraft in the district of a Foreign Service post and United States citizens or property are involved, the local Foreign Service post shall report the disaster fully to the Department and to the supervisory mission (or the supervisory consular office where there is no mission).

§ 102.18 Protection of United States citizens involved.

The local Foreign Service post shall follow substantially the procedures prescribed in §§ 102.11 to 102.13 in protecting United States citizens (whether

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alive or dead) involved in a foreign aircraft accident.

§ 102.19 Protection of United States property.

The local Foreign Service office shall follow substantially the procedures set forth in §§ 102.11 and 102.14 in protecting United States mail and baggage, personal effects and cargo belonging to United States citizens.

Subpart B—Recommendations to the President Under Section 801 of the Federal Aviation Act of 1958

AUTHORITY: Sec. 4, Act of May 26, 1949, as amended (63 Stat. 111; 22 U.S.C. 2658); E.O. 11920 (June 11, 1976, 41 FR 23665).

SOURCE: 41 FR 31548, July 29, 1976, unless otherwise noted.

§ 102.21 Purpose.

The purpose of this subpart is to set forth procedures for the receipt by the Department of State of comments from private parties on possible recommendations by the Department to the President on decisions of the Civil Aeronautics Board submitted for the President's approval under section 801 of the Federal Aviation Act of 1958, which relates to overseas and international air transportation.

§ 102.22 [Reserved]

§ 102.23 Applicability.

(a) This subpart applies to all communications between private parties and officials or employees of the Department of State, including those stationed abroad, on matters set forth in § 102.21 of this subpart.

(b) This subpart applies, with respect to any particular proceeding before the Civil Aeronautics Board, from the time that the Board's decision has been submitted to the President for consideration until the President has issued a final decision with respect to that proceeding.

§ 102.24 [Reserved]

§ 102.25 Submission of comments.

(a) All communications by private parties with Departmental officials or

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employees concerning a Presidential decision under section 801 of the Federal Aviation Act shall, whenever possible, be made in writing. Any such communication which is not made in writing shall be summarized by the official or employee of the Department who receives the communication.

(b) All such summaries and written communications, except those relating to matters that are specifically authorized under criteria established by Executive Order to be kept confidential in the interest of national defense or foreign policy, are to be placed in a public docket and available for public inspection and copying and for responsive comment.

§ 102.26 [Reserved]

§ 102.27 Docket.

(a) All comments submitted under this subpart shall reference the number of the Civil Aeronautics Board docket relating to the proceeding which is the subject of the comment.

(b) The original and four copies of such comments may be mailed to the Director, Office of Aviation, Department of State, Washington, DC 20520, or delivered to the Director, Office of Aviation, Room 5830, Department of State, Washington, DC 20520, 8:45 a.m. to 5:30 p.m. local time, Monday through Friday except Federal holidays. Written comments submitted to Department officials other than the Director of the Office of Aviation and summaries of oral communications prepared in accordance with §102.25(a) of this subpart shall be forwarded to the Director of the Office of Aviation.

(c) All comments submitted under this subpart and placed in the docket, are available for public inspection and copying and for responsive comment at the address and times specified in paragraph (b) of this section.

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

Subpart A—General

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103.10 Appeals.

103.11 Payment of final assessment.

103.12 Reporting a violation.

AUTHORITY: Pub. L. 105-277, 112 Stat. 2681, Div. I (22 U.S.C. 6701 *et seq.*).

SOURCE: 64 FR 73813, Dec. 30, 1999, unless otherwise noted.

Subpart A—General

§ 103.1 Purpose.

This part is intended to implement sections 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998 (Act), 22 U.S.C. 6701 *et seq.* The Chemical Weapons Convention Regulations promulgated by the Department of Commerce, 15 CFR Parts 710 through 722, also implement sections of the Act.

§ 103.2 Definitions.

The following are definitions of terms as used in this part only.

Bureau of Export Administration (BXA). The Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapons Convention (CWC or Convention). The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998. (22 U.S.C. 6701 *et seq.*)

CWCR. The Chemical Weapons Convention Regulations promulgated by the Department of Commerce. (15 CFR parts 710 through 722.)

Executive Director. The Executive Director, Office of the Legal Adviser, U.S. Department of State.

Facility agreement. A written agreement or arrangement between a State Party to the Convention and the Organization for the Prohibition of Chemical Weapons relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review under this part, but which may be subject to collection proceedings or judicial review in an appropriate federal court as authorized by law.

Host Team. The U.S. Government team that accompanies the Inspection Team during a CWC inspection to which this part applies.

Host Team Leader. The head of the U.S. Government team that hosts and accompanies the Inspection Team during a CWC inspection to which this part applies.

Inspection assistant. An individual designated by the Technical Secretariat to assist inspectors in an inspection, such as medical, security and administrative personnel and interpreters.

Inspection Team. The group of inspectors and inspection assistants assigned by the Director-General of the OPCW's Technical Secretariat to conduct a particular inspection.

Lead agency. The executive department or agency responsible for implementation of the CWC declaration and inspection requirements for specified facilities. The lead agencies are the Department of Defense (DOD) for facilities owned and operated by DOD (including those operated by contractors to the agency), and those facilities leased to and operated by DOD (including those operated by contractors to the agency); the Department of Energy (DOE) for facilities owned and operated by DOE (including those operated by contractors to the agency), and those facilities leased to and operated by DOE (including those operated by contractors to the agency), including the National Laboratories and components of the nuclear weapons complex; and the Department of Commerce (DOC) for all facilities that are not owned and operated by or leased to and operated by DOD, DOE or other U.S. Government agencies. Other departments and agencies that have notified the United States National Authority of their decision to be excluded from the CWCR shall also have lead agency responsibilities for facilities that are owned or operated by (including those operated by contractors to the agency), or that are leased to or operated by, those other departments and agencies (including those operated by contractors to the agency).

Office of Chemical and Biological Weapons Conventions. The office in the Bureau of Arms Control of the United States Department of State that includes the United States National Authority Coordinating Staff.

Organization for the Prohibition of Chemical Weapons (OPCW). The entity established by the Convention to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

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Party. The United States Department of State and any person named as a respondent under this part.

Perimeter. In case of a challenge inspection, the external boundary of the site, defined by either geographic coordinates or description on a map.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Secretary. The Secretary of State.

Technical Secretariat. The Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

United States National Authority. The Department of State serving as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and States Parties to the Convention and implementing the provisions of the CWCIA in coordination with an interagency group designated by the President consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Joint Chiefs of Staff and the heads of agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the United States National Authority.

Subpart B—Samples

§ 103.3 Requirement to provide a sample.

(a) *Voluntary provision of a sample.* The Host Team Leader will notify appropriate site representatives of any request by an Inspection Team to take a sample. At the request of the appropriate site representative, this notification will be in writing. A site representative may volunteer to provide a sample to the Inspection Team, or may

communicate to the Host Team Leader any reason for which the representative believes a sample should not be required.

(b) *Notification of requirement to provide a sample.* If a sample is not provided pursuant to paragraph (a) of this section, the Host Team Leader will notify, in writing, the owner or operator, occupant or agent in charge of an inspected premises of any requirement, under paragraph (c) or (e) of this section, to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat.

(c) *Requirement to provide a sample.* Pursuant to section 304(f)(1) of the CWCIA, unless a lead agency advises the United States National Authority pursuant to paragraph (d) of this section, the owner or operator, occupant or agent in charge of the premises to be inspected is hereby required to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat that a sample be taken in accordance with the applicable provisions contained in the Chemical Weapons Convention and the CWCIA.

(d) *Consultations with the United States National Authority.* After consulting with the Host Team Leader, a lead agency that finds that any of the following conditions, as modified pursuant to paragraph (j) of this section if applicable, may not have been satisfied shall promptly advise the United States National Authority, which, in coordination with the interagency group designated by the President in section 2 of Executive Order 13128, shall make a decision:

(1) The taking of a sample is consistent with the inspection aims under the Convention and with its Confidentiality Annex;

(2) The taking of a sample does not unnecessarily hamper or delay the operation of a facility or affect its safety, and is arranged so as to ensure the timely and effective discharge of the Inspection Team's functions with the least possible inconvenience and disturbance to the facility;

(3) The taking of a sample is consistent with the applicable facility agreement. In particular:

(i) Any sample will be taken at sampling points agreed to in the relevant facility agreement; and

(ii) Any sample will be taken according to procedures agreed to in the relevant facility agreement;

(4) In the absence of a facility agreement, due consideration is given to existing sampling points used by the owner or operator, occupant or agent in charge of the premises, consistent with any procedures developed pursuant to the CWCIA (15 CFR parts 710 through 722);

(5) The taking of a sample does not affect the safety of the premises and will be consistent with safety regulations established at the premises, including those for protection of controlled environments within a facility and for personal safety;

(6) The taking of a sample does not pose a threat to the national security interests of the United States; and

(7) The taking of a sample is consistent with any conditions negotiated pursuant to paragraph (j) of this section, if applicable.

(e) *Determination by United States National Authority.* (1) If, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that all of the conditions of paragraph (d) are satisfied and that a sample shall be required, then the owner or the operator, occupant or agent in charge of the premises shall provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(2) If, however, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that any of the conditions of paragraph (d) are not satisfied and that a sample shall not be required, then the owner or the operator, occupant or agent in charge of the premises shall not be re-

quired to provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(f) *Person to take a sample.* If a sample is required, the owner or the operator, occupant or agent in charge of the inspected premises will determine whether the sample will be taken by a representative of the premises, the Inspection Team, or any other individual present. The owner or the operator, occupant or agent in charge of the inspected premises may elect to have a representative present during the taking of a sample.

(g) *Requirement that samples remain in the United States.* No sample collected in the United States pursuant to an inspection permitted by the CWCIA may be transferred for analysis to any laboratory outside the territory of the United States.

(h) *Handling of samples.* Samples will be handled in accordance with the Convention, the CWCIA, other applicable law, and the provisions of any applicable facility agreement.

(i) *Failure to comply with this section.* Failure by any person to comply with this section may be treated as a violation of section 306 of the Act and section 103.5(a).

(j) *Conditions that restrict sampling activities during challenge inspections.* During challenge inspections within the inspected premises the Host Team may negotiate conditions that restrict activities regarding sampling, e.g., conditions that restrict where, when, and how samples are taken, whether samples are removed from the site, and how samples are analyzed.

(k) *Format of Inspection Team request.* It is the policy of the United States Government that Inspection Team requests for samples should be in written form from the head of the Inspection Team. When necessary, before a sample is required to be provided, the Host Team Leader should seek a written request from the head of the Inspection Team.

(l) *Requirement to provide a sample in the band around the outside of the perimeter during a challenge inspection.* In a band, not to exceed a width of 50 meters, around the outside of the perimeter of the inspected site, the Inspection Team, during a challenge

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inspection, may take wipes, air, soil or effluent samples where either:

- (1) There is consent; or
- (2) Such activity is authorized by a search warrant obtained pursuant to section 305(b)(4) of the CWCIA.

Subpart C—Recordkeeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCIA at 15 CFR parts 710 through 722) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

- (1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCIA, 15 CFR parts 710 through 722) of the Department of Commerce; or
- (2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCIA; or
- (3) To permit access to or copying of any record that is exempt from disclosure under the CWCIA or the CWCIA.

§ 103.6 Penalties.

(a) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have willfully disrupted, delayed or otherwise impeded an authorized inspection, as set forth in § 103.5(a), shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation

continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, or to submit any report, notice, or other information required by the CWCIA or the CWCIA, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCIA as set forth in § 103.5(b), shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(b) *Criminal penalties.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCIA, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action.* (1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

- (i) The conduct prohibited under 18 U.S.C. 229 or 229C; or
- (ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding under this section and 15 CFR 719.5. If the request is in accordance with applicable law, the

Secretary will initiate an administrative enforcement proceeding by issuing a Notice of Violation and Assessment (NOVA). The Office of Chief Counsel for Export Administration, Department of Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to paragraph (e) of this section and the CWCER (15 CFR parts 710 through 722) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process or attorney) of the initiation of administrative proceedings by sending, via first class mail, facsimile, or by personal delivery, the relevant documents.

(e) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel for Ex-

port Administration, Department of Commerce, and any other address(es) specified in the NOVA, in accordance with 15 CFR 719.8.

(f) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(g) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(h) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become final and unappealable.

(i) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCER at 15 CFR part 719.

§ 103.8 Final agency decision after administrative proceedings.

(a) *Review of initial decision.* (1) *Petition for review.* Any party may, within 7 days of the Administrative Law Judge's (ALJ) certification of the initial decision and order, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on the Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on

Department of State

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the Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-3839, Washington, D.C. 20230, and on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or not supported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That a prejudicial procedural error has occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) *Content of petition for review.* The petition must specifically set forth the grounds on which review is requested and be supported by citations to the record, statutes, regulations, and principal authorities.

(3) *Decision to review.* Review of the initial decision by the Secretary is discretionary, and is not a matter of right. The Secretary shall accept or decline review of the initial decision and order within 3 days after a petition for review is filed. If no such petition is filed, the Secretary may, on his or her own initiative, notify the parties within 10 days after the ALJ's certification of the initial decision and order that he or she intends to exercise his or her discretion to review the initial decision.

(4) *Effect of decision to review.* The initial decision is stayed until further order of the Secretary upon a timely petition for review, or upon action to review taken by the Secretary on his or her own initiative.

(5) *Review declined.* If the Secretary declines to exercise discretionary review, such order, and the resulting final agency decision, will be served on all parties personally, by overnight mail, or by registered or certified mail, return receipt requested. The Secretary need not give reasons for declining review.

(6) *Review accepted.* If the Secretary grants a petition for review or decides to review the initial decision on his or her own initiative, he or she will issue an order confirming that acceptance and specifying any issues to be briefed by all parties within 10 days after the

order. Briefing shall be limited to the issues specified in the order. Only those issues specified in the order will be considered by the Secretary. The parties may, within 5 days after the filing of any brief of the issues, file and serve a reply to that brief. The Department of Commerce shall review all written submissions, and, based on the record, make a recommendation to the Secretary as to whether the ALJ's initial decision should be modified or vacated. The Secretary will make a final decision within 30 days after the ALJ's certification of the initial decision and order.

(b) *Final decision.* Unless the Secretary, within 30 days after the date of the ALJ's certification of the initial decision and order, modifies or vacates the decision and order, with or without conditions, the ALJ's initial decision and order shall become effective as the final decision and order of the United States Government. If the Secretary does modify or vacate the initial decision and order, that decision and order of the Secretary shall become the final decision and order of the United States Government. The final decision and order shall be served on the parties and will be made available to the public.

(c) *Computation of time for the purposes of this section.* In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is computed to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 103.9 Final agency decision after settlement negotiations.

(a) *Settlements based on letter of intent to charge—*(1) *Approval of settlement.* Pursuant to § 719.5(b) of the CWC (15 CFR parts 710 through 722), the Department of Commerce may notify a respondent by letter of the intent to

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charge. If, following the issuance of such a letter of intent to charge, the Department of Commerce and respondent reach an agreement to settle a case, the Department of Commerce will recommend the proposed settlement to the Secretary. If the recommended settlement is in accordance with applicable law the Secretary will approve and sign it. No action is required by the ALJ in cases where the Secretary approves and signs such a settlement agreement and order.

(2) *Refusal to approve settlement.* If the Secretary refuses to approve the recommended settlement, the Secretary will notify the parties and the case will proceed as though no settlement proposal had been made.

(b) *Settlements following issuance of a NOVA—(1) Approval of settlement.* When the Department of Commerce and respondent reach an agreement to settle a case after administrative proceedings have been initiated before an ALJ, the Department of Commerce will recommend the settlement to the Secretary of State. If the recommended settlement is in accordance with applicable law, the Secretary will approve and sign it. If the Secretary approves the settlement, the Secretary shall notify the ALJ that the case is withdrawn from adjudication.

(2) *Refusal to approve settlement.* If the Secretary of State refuses to approve the recommended settlement, the Secretary will notify the parties of the disapproval, and the case will proceed as though no settlement proposal had been made.

(c) *Scope of settlement.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought pursuant to this part. This reflects the fact that the Government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and re-

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sponsibility is vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 103.10 Appeals.

Any person adversely affected by a final order respecting an assessment may, within 30 days after the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business, to appeal the order.

§ 103.11 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The Secretary, through the Attorney General, may file suit in an appropriate district court if necessary to enforce compliance with a final order issued pursuant to this part. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered or, if an appeal was filed pursuant to § 103.10, from the date of final judgment.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 103.12 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, this part, or the CWCER (15 CFR parts 710 through 722) has occurred or may occur, that person may notify: United States National Authority, Office of Chemical and Biological Weapons Conventions, Bureau of Arms Control, U.S. Department of State, Washington, DC 20520, Telephone: (703) 235-1204 or toll-free (877) CWC-NACS ((877) 292-6227), Facsimile: (703) 235-1065.

SUBCHAPTER L [RESERVED]